

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Part 11 of the Commission's)	EB Docket No. 01-66
Rules Regarding the Emergency Alert)	RM-9156
System)	RM-9215

To: The Commission

JOINT COMMENTS OF PUBLIC BROADCASTERS

Central Michigan University, Idaho State Board of Education (Boise State University), Iowa Public Broadcasting Board, Kent State University, Maine Public Broadcasting Corporation, Nebraska Educational Telecommunications Commission, Nevada Public Radio Corporation, Inc., Rocky Mountain Public Broadcasting Network, Inc., Sistema Universitario Ana G. Mendez, Inc., the Board of Supervisors, Louisiana State University and Agricultural and Mechanical College, University of Oklahoma, University of Wyoming, Washington State University, West Central Illinois Educational Telecommunications Corporation, and WSKG Public Telecommunications Council, all of whom are public broadcasters operating state or regional networks, (collectively, "the Public Broadcasters"), by their counsel, hereby provide these Comments in response to the *Notice of Proposed Rule Making and Order* in the captioned proceeding, FCC 01-88 (released March 20, 2001) ("NPRM"). (See Attachment A for complete list of public broadcast licensees).

The NPRM proposes to amend portions of Part 11 of the FCC Rules governing the Emergency Alert System ("EAS"). The Public Broadcasters seek to clarify the rules to allow permanent waivers of Section 11.51 of the FCC rules so that existing and proposed public

broadcasting satellite/repeater stations may be relieved of their obligation to install EAS equipment. The Commission is not required to issue a Further Notice of Proposed Rulemaking in order to address the Public Broadcasters' request because it is a "logical outgrowth" of this rulemaking proceeding.

The Logical Outgrowth Test

Addressing the issue of permanent waivers of Section 11.51 of the FCC's EAS rules, as suggested here, is a "logical outgrowth" of this rulemaking proceeding. Section 553 of the Administrative Procedure Act ("APA") requires that a rulemaking proceeding provide adequate notice and fair opportunity for interested parties to participate and present relevant information. Specifically, to comply with the requirements of Section 553(b)(3) of the APA, the final rule must be a "logical outgrowth" of the rulemaking proceeding. *See Owensboro on the Air v. United States*, 262 F.2d 702 (D.C. Cir. 1958). "For a rule to constitute a logical outgrowth of an agency proposal, the rule must be sufficiently related to the notice given that interested parties should have anticipated that such a requirement might be imposed . . . This standard can be stated as whether a reasonable person would be put on notice of the final rule." *See 1998 Biennial Regulatory Review "Annual Report of Cable Television Systems,"* 15 FCC Rcd 9707 (2000).

Addressing permanent waivers of Section 11.51 satisfies the APA's notice standards. While the NPRM did not specifically seek comment on Section 11.51 of the FCC's rules, the NPRM indicates that the proposals set forth for comment are, for the most part, intended to enhance the performance of the EAS during state and local emergencies. The NPRM also emphasizes that participation in state and local EAS activities remains voluntary and that the FCC does not wish to impose additional costs or burdens on broadcast stations that choose not to

participate in state and local area EAS plans. *See Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, EB Docket No. 01-66, FCC 01-88, ¶ 6 (rel. March 20, 2001) (“*NPRM*”). These comments regarding permanent waiver of Section 11.51 of the rules for satellite/repeater stations fall within the scope of this NPRM by addressing an additional burden placed on broadcasters whose participation in state and local area EAS plans is supposedly voluntary. Accordingly, under the “logical outgrowth” test, this NPRM soliciting comments on revisions to the FCC EAS rules is broad enough to permit the Commission to authorize permanent waivers of Section 11.51 of the EAS rules for public broadcasting satellite/repeater stations without issuing a Further Notice of Proposed Rulemaking.

BACKGROUND

The Public Broadcasters are public universities and university systems, public broadcasters, and governmental or non-profit educational entities operating noncommercial educational radio and television stations in furtherance of their educational mandate. Section 11.51 of the FCC rules requires installation of EAS encoder and decoder equipment at every broadcast station. After adoption of the EAS rules, many of the Public Broadcasters filed requests for waiver to operate one set of EAS equipment at their “lead” or “hub” station in order to satisfy the FCC’s EAS obligations. Previously, under the EBS rules, the Commission had stated that when broadcast station transmitters, licensed to the same entity, are located at different geographic points, but programmed from a common studio point, the licensee may request use of only one set of EBS equipment at the common studio point. Louisiana Ass’n of Broadcasters, 57 F.C.C. 2d 648, 651 (1976). The licensee must only demonstrate that the one set can meet the requirements and intent of the EBS rules. We believe this same principal should apply to EAS – the successor to EBS.

The FCC did grant EAS waiver requests to the Public Broadcasters, but only on a temporary basis. The waivers were permanent only if (i) the satellite/repeater stations rebroadcast 100% of the programming of their lead station and (ii) the satellite/repeater stations were located in the same EAS Local Area as the lead station. The Public Broadcasters meet the first criteria. However, the Public Broadcasters do not meet the second criteria for certain of their satellite/repeaters and, thus, do not qualify for permanent waivers. Thus, the Public Broadcasters must install EAS equipment at their satellite/repeater stations before the temporary waivers expire or seek additional time to install the requisite equipment. These initial waiver grants did not explain why stations in the same local EAS area received permanent waivers. Presumably, this is because stations in the same area can monitor the same local and state EAS alerts.

The Public Broadcasters contend, however, that their EAS waivers should be made permanent. Accordingly, on February 16, 2001, the Public Broadcasters filed a joint request for permanent waiver of the EAS obligations of Section 11.51 of the FCC's Rules for certain of their satellite/repeater stations. By letter dated April 19, 2001, the FCC denied the permanent waiver request and stated that "changes of this magnitude are best addressed in a rulemaking proceeding." (A copy of this letter is attached for the FCC's convenience in Attachment B).

ARGUMENT AND JUSTIFICATION

Allowing permanent waiver of Section 11.51 of the EAS rules is appropriate because the Public Broadcasters can meet the intent of the EAS rules without incurring the additional expense or effort to install EAS equipment at each satellite/repeater station. First, permanent EAS waivers would be in compliance with the Communications Act of 1934, as amended, ("the Act") because the Act is concerned with broadcasters' transmission of national emergency

information, not local information. From its inception, the national alerting system (from CONELRAD to EAS) was established to allow the President to communicate with the public during national emergencies. *See Amendment of Part 73, Subpart G, of the Commission's Rules Regarding Emergency Broadcast System*, 10 FCC Rcd 1786 (1994) (the “*Report and Order*”). In fact, the FCC’s emergency broadcasting rules were designed to aid the President in exercising these communications-related powers. Specifically, Sections 303(r) and 706(c) of the Act give the FCC the authority to regulate national emergency broadcasting. Thus, the Act and the emergency broadcast rules are concerned with the transmission of emergency information to the public during national emergencies. Because grant of a permanent EAS waiver would not impact the satellite/repeater stations’ ability to transmit national emergency information (i.e., the satellite/repeaters would carry 100 % of all hub stations programming, including national alerts), such a grant would not interfere with the Public Broadcasters’ statutory obligation to broadcast national emergency information. Thus, grant of permanent EAS waivers would not jeopardize the Public Broadcasters’ compliance with the intent of EAS.

Second, grant of permanent EAS waivers would not jeopardize the Public Broadcasters’ compliance with FCC rules and regulations on EAS activations. Nothing in the EAS rulemaking proceeding or the current EAS rules compels activation of EAS for state or local emergencies. State and/or local EAS plans govern in such situations. In fact, in the *NPRM*, the FCC “emphasizes that participation in state and local area EAS activities remains voluntary.” *See NPRM* at ¶ 6 (emphasis added). In addition, the *Report and Order* (which replaced the old Emergency Broadcast System with EAS) stated that this “Order mandates that broadcast and cable participate in national alerts. They may also use the equipment on a voluntary basis at the state and local level to disseminate emergency information to the public.” *See Report and Order*,

10 FCC Rcd at 1809 (emphasis added); *see also Amendment of Part 73, Subpart G, of the Commission's Rules Regarding Emergency Broadcast System*, 14 FCC Rcd 1273 (1998) (stating that national level EAS messages and EAS tests must be forwarded to the public. All other EAS messages are transmitted on a voluntary basis by the EAS participant).

Thus, the *Report and Order* lays out what is expected of broadcasters under the EAS system: they are only compelled to activate EAS for national alerts. Moreover, the EAS rules make these obligations quite clear. Section 11.54 of the FCC's Rules provides that national level emergency information must be broadcast. In contrast, Section 11.55 of the FCC's Rules states that state and local emergency information may be broadcast at the broadcasters' discretion, unless a State or local EAS plan requires the activation of EAS for state and/or local emergencies. Thus, unless required by a state and/or local EAS plan, the FCC rules make the broadcast of state and local emergency information discretionary.

Therefore, because national EAS activations carried by a "lead" or "hub" station are automatically retransmitted over satellite/repeater stations that "simulcast" the "lead" or "hub" station's programming, the Public Broadcasters' satellite/repeater stations comply with the intent of the EAS rules concerning the broadcast of national emergency information without having to incur the additional expense or effort to install EAS equipment at each of these satellite/repeater stations. If state and local alerts are truly "discretionary," (as this *NPRM*, the *Report and Order* and FCC rules clearly state) there is simply no need to compel the Public Broadcasters to install equipment at the satellite/repeater locations. For all these reasons, the circumstances here warrant a deviation from the general EAS rule requirement and such deviation will serve the public interest. Accordingly, there is no reason for such equipment to be installed.

Moreover, the savings through avoiding the unnecessary duplication in purchasing,

operating and maintaining additional sets of EAS equipment is obvious. For instance, Maine Public Broadcasting Corporation estimates the capital expense for its EAS equipment is approximately \$34,000 total. (Installation and operation of the equipment would be an additional expense). Iowa Public Broadcasting Board estimates that the cost of purchasing its EAS equipment would be approximately \$7,500 per repeater station, for a total of \$52,500 for its network. The Board of Supervisors, Louisiana State University and Agricultural and Mechanical College estimates that it will cost approximately \$10,000 total to purchase and install EAS equipment at its radio repeater stations. The University of Wyoming estimates that it will cost anywhere from \$52,000 to \$58,500 total to purchase and install EAS equipment at its thirteen satellite stations. Finally, Washington State University estimates that it will cost approximately \$42,112 to install EAS equipment at its satellite/repeater stations. As state and educational institutions operating noncommercial educational stations in times of scarce federal and state funding for public broadcasters, these savings would be of significant benefit to the Public Broadcasters in continuing to operate their stations.

The permanent waiver will not jeopardize the purpose and intent of the FCC's EAS rules. Currently there are approximately 1,663 authorized television stations (commercial and noncommercial) and approximately 12,717 authorized AM and FM radio stations (commercial and noncommercial). *See FCC Daily Digest*, Vol. 19, No. 230 (released December 1, 2000). Only a small number of these stations are noncommercial: 2,140 FM stations and 375 TV stations. The Public Broadcasters do not contend that all these stations should be eligible for this waiver. Instead, as with EBS, the waivers should be available only to broadcasters operating transmitters programmed from a common studio point that are 100% satellite/repeaters, such as noncommercial state or regional networks. *See Louisiana Ass'n of Broadcasters*, 57 F.C.C. 2d at

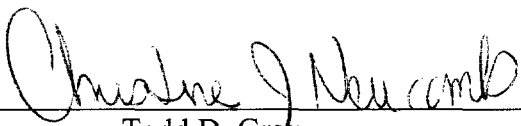
651. Consequently, only a very small group of broadcasters and stations will be eligible for permanent waiver of Section 11.51 of the FCC rules.

Accordingly, the Public Broadcasters contend that permanent waiver of Section 11.51 of the FCC's EAS rules is appropriate. The Public Broadcasters can meet the requirements and intent of the EAS rules for national alerts without incurring the additional expense of installing EAS equipment at each satellite/repeater station. Accordingly, the Public Broadcasters respectfully request permanent authority to operate a single set of EAS equipment at their "lead" or "hub" station to satisfy the EAS obligations of their existing repeater stations, as well as any proposed new satellite/repeater stations.

CONCLUSION

For all these reasons, the Public Broadcasters submit their Comments in the above-referenced rulemaking proceeding and urge the Commission to consider this issue and act favorably upon it.

Respectfully submitted,

By: 
Todd D. Gray
Margaret L. Miller
Christine J. Newcomb
Their Attorneys

DOW, LOHNES & ALBERTSON, pllc
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802
(202) 776-2571

June 11, 2001

EXHIBIT A

The Satellite/Repeater Stations of Each Public Broadcaster and the “Hub” of Each

Central Michigan University

Hub Station: WCMU-TV, Mount Pleasant, Michigan
Repeaters: WCML(TV), Alpena, Michigan
WCMW(TV), Manistee, Michigan
WCMV(TV), Cadillac, Michigan

Hub Station: WCMU-FM, Mount Pleasant, Michigan
WUCX-FM, Bay City, Michigan
WCMB-FM, Oscoda, Michigan
WWCM-FM, Standish, Michigan
WCML-FM, Alpena, Michigan
WCMW-FM, Harbor Springs, Michigan
WCMZ-FM, Sault Ste. Marie, Michigan
NEW FM Station, pending in FCC File No. BPED-19941019MA,
Traverse City, Michigan

Idaho State Board of Education (Boise State University)

Hub Station: KBSU-FM, Boise, Idaho
Repeaters: KBSX-FM, Boise, Idaho
KBSU(AM), Boise, Idaho
KBSW-FM, Twin Falls, Idaho
KBSM-FM, McCall, Idaho
KBSY-FM, Burley, Idaho
NEW FM station, pending in FCC File No. BPED-970701MC,
Sun Valley, Idaho
NEW FM station, pending in FCC File No. BPED-980928MA,
McCall, Idaho
NEW FM station, pending in FCC File No. BPED-981123MD,
McCall, Idaho
NEW FM station, pending in FCC File No. BPED-981123MD,
Sun Valley, Idaho

Iowa Public Broadcasting Board

Hub Station: KDIN-TV, Des Moines, Iowa
Repeaters: KIIN(TV), Iowa City, Iowa
KRIN(TV), Waterloo, Iowa
KYIN(TV), Mason City, Iowa
KTIN(TV), Fort Dodge, Iowa
KSIN(TV), Sioux City, Iowa

KBIN-TV, Council Bluffs, Iowa
KHIN(TV), Red Oak, Iowa
NEW TV station, pending in FCC File No. BPET-960508KE, Des Moines, Iowa
NEW TV station, pending in FCC File No. BPET-960508KF, Davenport, Iowa

Kent State University

Hub Station: WKSU-FM, Kent, Ohio

Repeaters: WKRJ(FM), New Philadelphia, Ohio
WKRW(FM), Wooster, Ohio
WKSV(FM), Thompson, Ohio
New FM station at Norwalk, Ohio (FCC File No. BPED-980512MW)
New FM station at Sandusky, Ohio (FCC File No. BPED-980522MD)

Maine Public Broadcasting Corporation

Hub Station: MPBC has no "hub" station. The stations are programmed from the network operations center and studios located at the MPBC headquarters in Bangor, Maine.

Repeaters: WMEM-TV, Presque Isle, Maine
WMEB-TV, Orono, Maine
WMEA-TV, Biddeford, Maine
WMED-TV, Calais, Maine
WCBB(TV), Augusta, Maine

Hub Station: MPBC has no "hub" station. The stations are programmed from the network operations center and studios located at the MPBC headquarters in Bangor, Maine.

Repeaters: WMEH(FM), Bangor, Maine
WMEM(FM), Presque Isle, Maine
WMEA(FM), Portland, Maine
WMED(FM), Calais, Maine
WMEW(FM), Waterville, Maine
WMEF(FM), Fort Kent, Maine
WMEP(FM), Camden, Maine

Nebraska Educational Telecommunications Commission

Hub Station: KUON-TV, Lincoln, Nebraska
Repeaters: KLNE(TV), Lexington, Nebraska
KHNE(TV), Hastings, Nebraska
KTNE(TV), Alliance, Nebraska
KXNE(TV), Norfolk, Nebraska
KNME(TV), Bassett, Nebraska

Hub Station: KPNE(TV), Merriman, Nebraska
KYNE(TV), Omaha, Nebraska
KUCV-FM, Lincoln, Nebraska
Repeaters: KLNE(FM), Lexington, Nebraska
KHNE(FM), Hastings, Nebraska
KTNE(FM), Alliance, Nebraska
KCNE(FM), Chadron, Nebraska
KXNE(FM), Norfolk, Nebraska
KMNE(FM), Bassett, Nebraska
KPNE(FM), Merriman, Nebraska

Nevada Public Radio Corporation, Inc.

Hub Station: KNPR(FM), Las Vegas, Nevada
Repeaters: KTPH(FM), Tonopah, Nevada
KLNR(FM), Panaca, Nevada
KWPR(FM), Lund, Nevada

Rocky Mountain Public Broadcasting Network, Inc.

Hub Station: KRMA(TV), Denver, Colorado
Repeaters: KRMJ(TV), Grand Junction, Colorado
KTSC(TV), Pueblo, Colorado
NEW TV station pending in FCC File No. BPET-961001KP,
Durango, Colorado

Sistema Universitario Ana G. Mendez, Inc.

Hub Station: WMTJ(TV), Fajardo, Puerto Rico
Repeaters: WQTO(TV), Ponce, Puerto Rico

The Board of Supervisors, Louisiana State University and Agricultural and Mechanical College

Hub Station: KDAQ(FM), Shreveport, Louisiana
Repeaters: KLSA(FM), Alexandria, Louisiana
KLDN(FM), Lufkin, Texas
KBSA(FM), El Dorado, Arkansas

University of Oklahoma

Hub Station: KGOU(FM), Norman, Oklahoma
Repeaters: NEW FM station, pending in FCC File No. BNPED-20000118AER,
Woodward, Oklahoma

University of Wyoming

Hub Station: KUWR(FM), Laramie, Wyoming
Repeaters: KUWA(FM), Afton, Wyoming
KBUW(FM), Buffalo, Wyoming
KUWC(FM), Casper, Wyoming
KUWP(FM), Powell, Wyoming
KDUW(FM), Douglas, Wyoming
KUWG(FM), Gillette, Wyoming
KUWJ(FM), Jackson, Wyoming
KUWN(FM), Newcastle, Wyoming
KUWX(FM), Pinedale, Wyoming
KUWZ(FM), Rock Springs, Wyoming
KSUW(FM), Sheridan, Wyoming
KUWD(FM), Sundance, Wyoming
KUWT(FM), Thermopolis, Wyoming

Washington State University

Hub Station: WSU has no “hub” station. The stations are programmed from the designated control point at Murrow Center, Pullman, Washington
Repeaters: KNWY(FM), Yakima, Washington
KNWR(FM), Ellensburg, Washington
KWSW(FM), Walla Walla, Washington
KLWS(FM), Moses Lake, Washington

West Central Illinois Educational Telecommunications Corporation

Hub Station: CONVOCOM has no “parent” station. CONVOCOM’s master control center is currently located in Peoria, Illinois (CONVOCOM has plans to relocate the master control center to Chatham, Illinois).
Repeaters: WSEC(TV), Jacksonville, Illinois
WQEC(TV), Quincy, Illinois
WMEC(TV), Macomb, Illinois

WSKG Public Telecommunications Council

Hub Station: WSKG(FM), Binghamton, New York
Repeaters: WSQA-FM, Hornell, New York
WSQC-FM, Oneonta, New York
WSQE-FM, Corning, New York
WSQG-FM, Ithaca, New York
WSQX-FM, Binghamton, New York
NEW FM station, pending in FCC File No. BPED-970212MB, Ithaca, New York

Hub Station: WSKG-TV, Binghamton, New York

Repeaters: NEW TV station, pending in FCC File No. BPET-960126KE, Corning,
New York

NEW TV station, pending in FCC File No. BPET-961213KE, Waverly,
New York

ATTACHMENT B



Federal Communications Commission
Washington, D.C. 20554

April 19, 2001

Ms. Christine J. Newcomb
Dow, Lohnes & Albertson
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036-6802

Dear Ms. Newcomb:

This is in response to your letter of February 16, 2001, requesting a permanent waiver of Emergency Alert System obligations for certain satellite/repeater broadcast station. Specifically, you requested a permanent waiver of Part 11 of the Commission's rules to allow a group of public broadcaster stations, operating state or regional networks, to operate a single set of EAS equipment at their "lead" or "hub" station to satisfy the EAS obligations of their satellite/repeater stations (both existing and proposed).

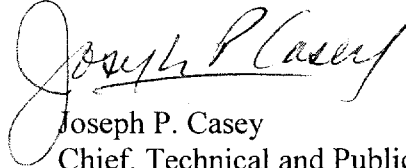
Section 11.1 of the Commission's rules states that the purpose of the EAS is to provide the President immediate communications to the public at the National, state and local area levels during periods of National emergencies. Section 11.1 also states that the EAS may be used to provide the heads of state and local governments, with a means of emergency communication with the public in their state or local area. The EAS rules were adopted after considering the extensive record that was developed during the rulemaking proceeding.

State and local authorities rely on the voluntary participation of broadcasters, cable operators and other participants, to provide early warning to communities about regional, state, county, and local emergencies. The EAS network was carefully designed so that the equipment could be programmed to provide lifesaving information to audiences in a specific local operational area. Thus, if satellite stations carrying 100 percent of the programming of a station that is in a different operational area, then the satellite station would not be able to advise its audience to take protective action in the event of an emergency in their local area.

After careful review of your request, we decline to grant a permanent waiver of the rules to relieve existing and proposed satellite/repeater stations of their obligation to install EAS equipment. We believe that granting your request for permanent waiver would have a significant impact on the community. Changes of this magnitude are best addressed in a rulemaking proceeding so that all interested parties may have the opportunity to comment.

Please be advised that the Commission will continue to consider requests for temporary waiver of the EAS rules on a case-by-case basis.

Sincerely,

A handwritten signature in black ink, reading "Joseph P. Casey". The signature is written in a cursive style with a large, looping initial "J".

Joseph P. Casey
Chief, Technical and Public Safety Division
Enforcement Bureau